IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 913 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PURUSHOTTAMBHAI BUDHABHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR KIRTIDEV R DAVE for the Petitioner.

Mr.V.M.Pancholi, Additional PUBLIC PROSECUTOR, for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2003

ORAL JUDGEMENT

The petitioner has challenged the order of externment passed against him by the Sub Divisional Magistrate, Vadodara in Externment Case No.12 of 2002. By the impugned order dated 14.08.2002, at Annexure 'E'

in the compilation, the petitioner is externed from Vadodara City and District for a period of one year. The appeal preferred against the said order is also dismissed by the State Government vide the order dated 23.10.2002, produced at Exhibit 'H' in the compilation. The aforesaid orders are challenged by the petitioner in this petition.

The learned Advocate for the petitioner submitted that the petitioner was served with a show cause notice under Section 59 of the Bombay Police Act. The said show cause notice is produced at Annexure 'A', page 13. Certain grounds are mentioned in the show cause notice, indicating the activities of the petitioner. There is also a reference about two criminal cases which are pending against the petitioner.

So far as the allegations are concerned, it is stated in the show cause notice at serial Nos. 1 to 9 that the petitioner is harassing the citizens in the area and that the citizens of the Town have also stated before the authority that the petitioner is a very head-strong person and because of fear, nobody is able to give their names. Looking to the aforesaid allegations, it is clear that no particulars are given about the date of any incident or area, in which the petitioner has acted in such high-handed manner. In a very routine and casual manner, allegations are made against the petitioner. Now, it is required to be appreciated that the show cause notice is issued to the petitioner for giving appropriate reply. Looking to these grounds, it is clear that it is impossible to give any effective reply.

In this connection, reference is required to be made to the Division Bench judgment of this Court in Rajput Ranjitsing Jatubha v. Vinay Vyas, Sub-Divisional Magistrate, Palanpur & Others, 1986(1) GLR 478. In the said judgment, this Court has observed as under :-

> " ... ...
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> A mere look at the allegations shows that they suffer from the vice of vagueness viz. (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It must, therefore, be held that the petitioner got no reasonable

opportunity to show cause against the proposed externment on the allegations contained in the aforesaid show cause notice.

... ..."

Learned Advocate for the petitioner submitted that in view of the fact that no particulars are given in the show cause notice in any manner, the notice is absolutely vague and on that very ground, the order is externment is required to be set aside. Learned Advocate for the petitioner, therefore, relied upon the decision in Dafer Rahman Zarar v. State of Gujarat & Ors., 1999(1) G.L.H. 425. This Court has observed as under in paragraphs 4 and 5 :-

" ... ...

4. Perusal of the show-cause notice, Annexure "A" shows that except three cases, two under IPC and one under Prohibition Act, all allegations are general in nature and vague in character. The typed copy of translation of show-cause notice shows that it runs into four pages but no where in the notice, the period and the area of operation of the petitioner has been disclosed. The effect of such non-disclosure in the show-cause notice was considered by the Division Bench of this Court in a case of Rajput Ranjitsing Jatuba v. Vinay Vyas, 1986(1) GLR 478. The Division Bench observed that a mere look at the allegations show that they suffer from the vice of vagueness, viz., (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It was further observed that due to these infirmities the petitioner got no reasonable opportunity to show-cause against the proposed externment on the allegations contained in the show cause notice. It further observed if the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through. Applying

verdict of the Division Bench to the facts contained in show-cause notice, Annexure "A", it can safely be said that the notice is vague in as much as, it does not disclose the period and the area of petitioner's nefarious activities which has not only rendered the notice invalid but also rendered the impugned order invalid. As a result thereof, the impugned order of the Externing Authority cannot be maintained.

5. The notice, Annexure "A", is further vague inasmuch as in para 2 thereof various activities of the petitioner have been disclosed but no date, time, etc., so also place has been shown. It further appears that the Externing Authority has travelled beyond the allegations contained in the show-cause notice. In the Judgment the Externing Authority was influenced not only by two cases under Section 323, etc. of the Indian Penal Code, but also by four more cases viz. CR. Nos. 109/95, 123/95, 87/96 and 110/97. While mentioning these criminal cases against the petitioner in the show-cause notice, the Externing Authority did not disclose under which sections of the IPC these cases were registered against the petitioner, and further, since these cases were not shown in the show-cause notice the petitioner was prevented from presenting effective defence to the show-cause notice. This has rendered the order of the Externing Authority violative of principles of natural justice and it has also rendered the said order suffering from the vice of non-application of mind. This is another ground on which the impugned order of the Externing Authority cannot be sustained. The order of the Externing Authority further suffers from the vice of non-application of mind. When it is mentioned that earlier the offences have been registered and proved against the person though the aforesaid person is not stopping the aforesaid antisocial activities. In the show cause notice, it was mentioned that these cases are pending. There was no material before the Externing

Authority that these offences were proved. On the other hand the order of the Externing Authority shows that the stand of the petitioner before him was that he was acquitted in two criminal cases under the IPC. In respect of this stand the Externing Authority made no efforts to ascertain whether those cases were pending or resulted in conviction or acquittal which again renders the order of the Externing Authority bad on account of non-application of mind to the material on record.

... ..."

Considering the aforesaid aspect of the matter and considering the fact that the notice issued against the petitioner is an absolutely vague notice for not giving appropriate particulars in the notice, by which the petitioner is denied his right to give effective reply to the show cause notice, the order of externment passed by the Department is required to be set aside. As indicated above, the show cause notices is given for the purpose of giving appropriate explanation and not to complete mere formality of the Act.

Accordingly, the order of externment dated 14.8.2002, at Annexure 'E', passed by the Sub Divisional Magistrate, Baroda, and the order passed by the appellate authority, vide order dated 23.10.2002, Annexure 'H', confirming the externment order and dismissing the appeal, are quashed and set aside. Rule is made absolute accordingly.

Direct service is permitted.

(P.B. Majmudar, J.)

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(apj)